

Message Text

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INFO OCT-01 SS-14 ISO-00 NSC-05 NSCE-00 SP-02 CU-02 NEA-06

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 8318

S E C R E T SECTION 01 OF 03 PARIS 08974

LIMDIS

NESCO

E.O. 11652: GDS

TAGS: AORG, UNESCO

SUBJECT: LEGAL ANALYSIS - PLO INITIATIVE TO ACQUIRE
PERMANENT OBSERVER DELEGATE STATUS
AT 97TH EXECUTIVE BOARD

REF: (A) PARIS 8411, (B) PARIS 8496, (C) STATE 078428

SUMMARY: THERE IS NO EXPLICIT LEGAL AUTHORITY FOR
THE EXBD TO AUTHORIZE ESTABLISHMENT OF A PERMANENT
DELEGATE, NOR IS THERE ANY EXPLICIT RESTRICTION ON SUCH
ACTION. HOWEVER, THERE ARE PRECEDENTS WHERE THE
EXBD HAS ACTED, BY MAJORITY VOTE, TO AUTHORIZE OBSERVERS
TO HAVE PERMANENT DELEGATE STATUS. AUTHORIZING A
PERMANENT DELEGATE WOULD NOT CONFER DIPLOMATIC STATUS
UNDER HEADQUARTERS AGREEMENT WITH GOVT. FRANCE. END
SUMMARY.

1. IN RESPONSE REFTEL FOLLOWING IS PERMDEL ANALYSIS
OF POSSIBLE LEGAL ARGUMENTS BEARING ON PLO AND OTHER
LIBERATION MOVEMENTS BEING ACCORDED STATUS OF PERMANENT
OBSERVERS. THIS ANALYSIS IS A PRELIMINARY ONE AS THE
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EXACT WORDING OF THE PROPOSED NEW AGENDA ITEM AND THE

RESOLUTION WHICH WILL BE SUBMITTED IN SUPPORT THEREOF ARE NOT YET KNOWN. OUR PRESENT INFORMATION IS THAT THE ARAB STATES ARE STILL SEEKING CO-SPONSORS FOR THE NEW AGENDA ITEM AND THE RESOLUTION HAS NOT YET BEEN DRAFTED. AS OF THIS DATE NO DOCUMENTS HAVE BEEN FURNISHED TO THE SECRETARIAT AND WE MAY NOT HAVE THE PRECISE LANGUAGE UNTIL THE LAST MINUTE. THEREFORE, OUR ANALYSIS WILL BE BASED ON THE INFORMATION NOW AVAILABLE AS TO THE LIKELY SEQUENCE OF EVENTS.

2. FORM IN WHICH ISSUE WILL ARISE: (A) A GROUP OF STATES WILL PRESENT TO SECRETARIAT A REQUEST THAT A NEW ITEM BE ADDED TO AGENDA. PRESUMABLY THIS WILL CONCERN GRANTING ALL LIBERATION MOVEMENTS RECOGNIZED AS OBSERVERS BY UNESCO THE RIGHT TO HAVE A PERMANENT REPRESENTATIVE AT HEADQUARTERS. UNDER RULE II AGENDA OF THE MANUAL OF EXECUTIVE BOARD THE PROVISIONAL AGENDA SHALL INCLUDE: "ALL QUESTIONS PROPOSED BY MEMBER STATES". THEREFORE, UNDER THE RULES ANY MEMBER STATE CAN PROPOSE ANY ITEM FOR THE AGENDA. THE NEW ITEM WILL, THEREFORE, APPEAR ON AGENDA FOR ADOPTION AT THE OPENING OF THE SESSION AS A REQUEST TO ADD A NEW ITEM TO THE AGENDA, WHICH HAD BEEN PREVIOUSLY CIRCULATED. IF CHALLENGED IT WILL BE PUT TO SEPARATE VOTE. (B) GROUNDS FOR POSSIBLE CHALLENGE OF AN AGENDA ITEM. FIRST, MAJORITY VOTE ONLY IS REQUIRED FOR ADOPTION OF NEW ITEMS ON THE AGENDA. THE TWO-THIRDS PROVISION OF SECTION X RULE 46 WOULD NOT APPLY TO THIS SITUATION. THIS IS THE FIRM OPINION OF UNESCO LEGAL ADVISER. THAT RULE IS STRICTLY CONSTRUED TO FIT ONLY THE SITUATIONS SPECIFIED IN THE RULE. NONE OF THEM EXIST HERE. THIS DOES NOT INVOLVE ANY AMENDMENT OF THE RULES OF PROCEDURE. THE RULES DO NOT MENTION THE SUBJECT OF PERMANENT DELEGATES AND WOULD NOT HAVE TO BE AMENDED TO INCLUDE SUCH AN ITEM ON AGENDA. THE RULES ARE QUITE CLEAR THAT ANY STATE CAN RAISE ANY ITEM FOR THE AGENDA, AND ADOPTION OF THE AGENDA REQUIRES ONLY A MAJORITY VOTE. IF A CHALLENGE WERE MADE TO THE AGENDA IT WOULD LIKELY HAVE TO BE IN FORM OF REQUESTING A DELETION OF ITEM FROM AGENDA.

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INDEED, THIS WOULD BE THE MOST EFFECTIVE WAY OF GETTING ITEM OFF. HOWEVER, AGAIN IT WOULD DEPEND ON A VOTE OF THE 40 MEMBER BOARD AND THE VOTE WOULD SURELY BE ALONG EXPECTED POLITICAL LINES.

3. ONCE ON THE AGENDA, WHAT ARE POSSIBLE LEGAL ACTIONS?
(A) DOES THE EXECUTIVE BOARD HAVE AUTHORITY TO GRANT PERMANENT OBSERVER STATUS (REFTEL, POINT 1)? THERE IS

NO EXACT PRECEDENT FOR THIS ACTION. THE CLOSEST
PRECEDENTS AVAILABLE ARE FOLLOWING:

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 8319

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25 EX/DECISIONS 12.8 (9 FEB. 1951), "THE
EXECUTIVE BOARD AGREED IN PRINCIPLE TO THE
ADMISSION AT THE HEADQUARTERS OF THE
ORGANIZATION OF PERMANENT OBSERVERS OF NON-
MEMBER STATES, BUT, BEFORE TAKING A FINAL
DECISION REQUESTED THE DG TO STUDY THE STATUS
OF SUCH OBSERVERS AND TO REPORT TO THE BOARD
AT ITS NEXT SESSION."

26/EX/DECISIONS (25 JULY 1951), "ON THE
REPORT OF THE EXTERNAL RELATIONS COMMITTEE
(DOCUMENT 26 EX/37 ADDENDUM) THE EXED
AUTHORIZED THE DG TO GRANT FACILITIES TO
OBSERVERS OF NON-MEMBER STATES AS DESCRIBED
IN DOCUMENT 26 EX/22".

THE ONLY NON-MEMBER STATE TO AVAIL ITSELF OF
THIS PROVISION WAS THAT OF THE HOLY SEE WHICH APPOINTED
A PERMANENT OBSERVER DELEGATE. THE DISTINCTION FROM

THE PRESENT ISSUE IS THAT THE LANGUAGE REFERRED ONLY TO
"NON-MEMBER STATES" AND LIBERATION MOVEMENTS DO NOT
HAVE THIS STATUS. THEREFORE, IT COULD BE ARGUED THAT
THIS PROVISION WAS NEVER INTENDED TO GIVE THE BOARD
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LEGAL AUTHORITY. HOWEVER, IT COULD AS WELL BE ARGUED
THAT IT ESTABLISHED A PRECEDENT THAT THE BOARD HAD THE
POWER TO ACT ON ISSUE OF WHO HAS THE RIGHT TO BE A
PERMANENT OBSERVER DELEGATE.

SECOND PRECEDENT INVOLVED THE LEAGUE OF ARAB STATES AND
ITS SUCCESSOR ALEXSO. 44 EX/DECISIONS 9.4, "RELA-
TIONS WITH THE LEAGUE OF ARAB STATES", "AUTHORIZES THE
DG TO NEGOTIATE WITH THE SECRETARY GENERAL OF THE LEAGUE
OF ARAB STATES AN AGREEMENT ESTABLISHING OFFICIAL
RELATIONS BETWEEN THE TWO ORGANIZATIONS AND DEFINING
THE METHODS OF THEIR CO-OPERATION..."

"AUTHORIZES THE DG TO RECOGNIZE ON A PROVISIONAL BASIS
THE PERMANENT DELEGATE DESIGNATED BY THE ARAB LEAGUE."

THIS CONFERRED PERMANENT OBSERVER DELEGATE STATUS ON
REPRESENTATIVES OF AN INTER-GOVERNMENTAL ORGANIZATION.
SIMILAR STATUS WAS GIVEN TO THE IBERO-AMERICAN BUREAU
AND THE ORGANIZATION OF AFRICAN UNITY. AGAIN THIS AP-
PLIED TO INTER-GOVERNMENTAL ORGANIZATIONS' NOT TO LIBERA-
TION MOVEMENTS, BUT IT WAS EXECUTIVE BOARD THAT ACTED
AND ONLY A MAJORITY VOTE WAS NEEDED.

(B) SHOULD ACTION ONLY BE BY GENERAL CONFERENCE (REFTEL
POINT 3)?

ARGUMENTS REGARDING AUTHORITY WOULD BE RELEVANT HERE AS
QUESTION WOULD BE WHETHER EXECUTIVE BOARD HAD EVER ACTED
BEFORE OR WHETHER IT HAD LEFT SUCH MATTERS TO THE GEN
CONF. AS EXBD HAS NEVER ACTED IN A CASE EXACTLY LIKE
THIS ONE, IT COULD BE ARGUED THAT THE GEN CONF SHOULD
DECIDE AN ISSUE OF SUCH MAGNITUDE. THE POSSIBLE COUNTER
ARGUMENT, AS POINTED OUT BY FOBES AND BY THE LEGAL AD-
VISER, IS THAT SINCE THE GEN CONF EVIDENCED ITS RECOG-
NITION OF LIBERATION MOVEMENTS BY PASSING SEVERAL RESO-
LUTIONS SPECIFICALLY REFERRING TO THEM, IT WAS THE IN-
TENT OF THE GEN CONF THAT THESE MOVEMENTS HAVE ACCESS
TO AND BE FACILITATED IN DEALING WITH THE ORGANIZATION.
THEREFORE, IT IS TO BE EXPECTED THAT THEY WOULD NEED TO
HAVE PERMANENT REPRESENTATIVES TO CARRY OUT THE INTENT
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OF THE RESOLUTIONS PASSED. HOWEVER, IT COULD ALSO BE ARGUED THAT SINCE THE GEN CONF TOOK SUCH PRECISE ACTIONS HAD IT INTENDED FOR THERE TO BE PERMANENT OBSERVERS IT WOULD HAVE SO DESIGNATED. THEREFORE, THIS ARGUMENT COULD BE RAISED, BUT IT WOULD NOT PREVENT A VOTE ON THE RESOLUTION AND THIS VOTE WOULD SURELY BE DECIDED ON POLITICAL GROUNDS.

4. OTHER POSSIBLE ACTIONS:

(A) AMEND THE RESOLUTION OR PRESENT SUBSTITUTE RESOLUTION.

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TO SECSTATE WASHDC PRIORITY 8320

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AN AMENDMENT TO PUT OFF OR OTHERWISE MODIFY THE LANGUAGE COULD CERTAINLY BE INTRODUCED OR A SUBSTITUTE RESOLUTION COULD BE PROPOSED. IN BOTH CASES, THEY WOULD BE VOTED ON FIRST AS BEING FARTHEST REMOVED FROM ORIGINAL QUESTION. IF ADOPTED, THEY WOULD PRECLUDE THE ORIGINAL MOTION. AGAIN THIS WOULD BOIL DOWN TO COUNTING VOTES.

(B) RULINGS BY THE CHAIR OR THE LEGAL ADVISER.

THE CHAIR WOULD RULE ONLY ON PROCEDURAL POINTS. IF HIS RULING WERE OBJECTED TO IT COULD BE CHALLENGED. MAJORITY VOTE WOULD BE NEEDED TO OVERRULE THE CHAIR. IT IS HIGHLY DOUBTFUL IF THE CURRENT CHAIRMAN, WYNTER, WOULD MAKE ANY RULING WHICH WOULD EFFECT SUBSTANCE OF THE PROPOSAL. AS TO LEGAL ADVISER, HIS VIEWS ARE ONLY OPINIONS AND NOT RULINGS. THEY CAN BE IGNORED. HE WOULD BE CAREFUL TO PRESENT ALL POSSIBLE LEGAL POINTS OF VIEW, PRO AND CON.

(C) ACTION BY SECRETARIAT.

THE SECRETARIAT IS BOUND TO PUT ITEMS ON AGENDA AND HAS NO DISCRETION. THE DIRECTOR GENERAL MIGHT MAKE A
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STATEMENT, BUT HE WOULD NOT OPENLY EXPRESS AN OPINION ON SUCH AN ISSUE, BUT WOULD FOLLOW THE RECOMMENDATION OF THE BOARD. M'BOW WOULD CERTAINLY NOT BE EXPECTED TO MAKE ANY PUBLIC STATEMENT UNDER PRESENT CIRCUMSTANCES. IN ANY CASE, THE BOARD CAN IGNORE THE DG AND PROBABLY WOULD IN THE POLITICAL CONTEXT OF THIS ISSUE.

5. EFFECT OF RESOLUTION GRANTING PERMANENT OBSERVER STATUS.

SUCH RESOLUTION WOULD NOT CONFER ANY DIPLOMATIC PRIVILEGES ON THE DELEGATE NOR IMPLY DIPLOMATIC RECOGNITION. UNDER HEADQUARTERS AGREEMENT WITH HOST COUNTRY, FRANCE, NEITHER BOARD NOR GEN CONF CAN CONFER DIPLOMATIC STATUS. ARTICLE 18, PARA. 1 CLEARLY LIMITS GRANTING OF DIPLOMATIC STATUS ONLY TO REPRESENTATIVES OF "MEMBER STATES." IT IS QUITE CLEAR THAT AS OF NOW GOVERNMENT OF FRANCE WOULD NOT INTERPRET HEADQUARTERS AGREEMENT TO GIVE DIPLOMATIC STATUS AND UNESCO CANNOT ACT ON ITS OWN. THE ONLY PRIVILEGE THE REPRESENTATIVES WOULD HAVE WOULD BE ACCESS TO HEADQUARTERS.

6. CONCLUSIONS: IT IS POSSIBLE TO RAISE LEGAL ARGUMENTS OF SUBSTANCE AGAINST RESOLUTIONS WHICH ARE EXPECTED TO BE PROPOSED ON SUBJECT MATTER, BUT IT WILL NOT BE POSSIBLE TO PREVENT A VOTE BY LEGAL MANEUVER. VOTE WILL CERTAINLY GO ALONG POLITICAL LINES AND FOLLOW INSTRUCTIONS FROM CAPITALS. PERMDEL WILL BY SEPARATE CABLE ANALYZE VIEWS OF OTHER DELEGATIONS; WE ARE WORKING NOW TO GET A CROSS SECTION, ALTHOUGH VIEWS MUST BE TAKEN AS TENTATIVE AND WITHOUT BENEFIT OF INSTRUCTIONS. OF

OPTIONS POSED IN REFTTEL ONLY FALL-BACK POSITION OF
PUTTING OFF TO FUTURE GEN CONF SEEMS HAVE SLIGHTEST
POSSIBILITY OF SUCCESS BUT THIS WILL REQUIRE FIRM AD-
VANCE COMMITMENTS FROM GOVERNMENTS. THIS POSSIBILITY
WILL BE DEALT WITH FURTHER IN SEPARATE CABLE.
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